

CITY OF SAN JOSE, CALIFORNIA Redevelopment Agency of the City of San Jose 50 W. San Fernando Street, Suite 900 San Jose, California 95110		Hearing Date/Agenda Number P.C.: 8-14-02 Item: 3.a. File Number: RCP01-02-002 Application Type: Conditional Use Permit Council District: 3 Planning Area: Central Assessors Parcel Number(s): 467-22-046
<h2>STAFF REPORT</h2>		
PROJECT DESCRIPTION		Completed by: Judie Gilli
Location: 52 East Santa Clara Street		
Gross Acreage: .41	Net Acreage: N/A	Net Density: N/A
Existing Zoning: CG	Existing Use: (Toons) Drinking and entertainment establishment including poolroom use and live music	
Proposed Zoning: No Change	Proposed Use: Drinking and entertainment establishment including poolroom use and live music After-midnight use until 2:00 AM	
GENERAL PLAN		Completed by: JG
Land Use/Transportation Diagram Designation		Project Conformance:
Core Area		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<input checked="" type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: JG
North: Commercial Building - Offices	CG	
East: Commercial Building – Retail	CG	
South: Commercial Building - Nightclub	CG	
West: Commercial Building - Dental Office	CG	
ENVIRONMENTAL STATUS		Completed by: JG
<input checked="" type="checkbox"/> Reuse of Downtown Supplemental EIR, Certified 04/27/99		<input type="checkbox"/> Exempt
<input type="checkbox"/> Environmental Impact Report complete on:		<input type="checkbox"/> Environmental Review Incomplete
<input type="checkbox"/> Negative Declaration circulated on :		<input type="checkbox"/> Negative Declaration adopted on:
FILE HISTORY		Completed by: JG
Annexation Title: Original City		Date:
HISTORIC STATUS: Contributing Structure		Completed by: JG
REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Action	Approved by: _____ Date: _____
<input checked="" type="checkbox"/> Conditional Approval	<input type="checkbox"/> Recommendation	
<input type="checkbox"/> Denial		Approved by: _____ Date: _____
<input type="checkbox"/> Uphold Director's Decision		
PROPERTY OWNER	BUSINESS OWNER	
Office Associates 66 East Santa Clara Street San Jose, CA 95113	Steven Hoey 52 East Santa Clara Street San Jose, CA 95113	

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: JG

Department of Public Works

None received

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant/property owner requests this Conditional Use Permit (CUP) to allow the operation of a drinking and entertainment establishment (d.b.a., Toon's), with poolroom use and live music. The CUP request also includes after-midnight operation of the facility, until 2:00 AM, daily. The project site is located at 52 East Santa Clara Street and is in the Commercial General (CG) Zoning District. A CUP is required in the CG Zoning District for drinking and entertainment establishments (i.e., bars and nightclubs), poolrooms and the operation of any non-office, commercial facility after midnight. Eating establishments are permitted within the CG district and do not require conditional approval.

The 0.41-acre project site is developed with a two-story commercial building. Through this CUP, the existing structure will be used for a nightclub, poolroom (seven pool tables are proposed; any facility with three or more pool tables is deemed a "poolroom") and live music. The proposed hours of operation of the facility are 6:00 PM to 2:00 AM, daily. The project site is situated amid a variety of commercial uses and abuts another nightclub (d.b.a., Voodoo Lounge) to the south. Toon's has been in operation since 1991. The facility was originally approved by the Planning Commission through a CUP (RCPA91-04-005, see Attachment A), that expired on December 14, 1999, so a new CUP is required. The approval of the subject CUP will allow Toon's to continue to operate as a nightclub, poolroom and entertainment facility.

ENVIRONMENTAL REVIEW

Environmental clearance has been granted for this project through the Final Supplemental Environmental Impact Report (EIR) entitled, *Downtown Strategy Plan*, certified by City Council Resolution No. 68839 on April 27, 1999 in that the City has determined that the project does not involve any new significant environmental impacts beyond those previously analyzed in the EIR.

SAN JOSE GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, late night, entertainment-oriented uses, such as bars and nightclubs, are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation.

ANALYSIS

The main issues in regarding this proposal are the following:

Compliance with City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars

The proposed uses would be limited in operation to no later than 2 AM, with alcohol sales terminating at 1:30 AM. These provisions are consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars, where after midnight uses are allowed within the Downtown. Restaurants, cafés and other commercial uses are allowed where they can operate without detriment to planned or nearby residential uses or the general welfare of the surrounding area.

Police reports for Toon’s show a minimal number of service calls and reported incidents. The Police Department has confirmed that Toon’s present operations are acceptable and that they support the recommendation for approval of the proposed CUP, including the hours of operation.

Land Use Compatibility

Commercial uses surround the project site. An office building is located north and west of the site; a nightclub to the south and retail use to the east. There are no residential uses within 500 feet of the project site. Based on the composition of surrounding uses, the subject property is well suited for after-midnight bar use. Moreover, the proposed use has proven it can operate without detriment to adjacent uses as indicated by the owner’s good standing with the Police Department and acceptable operational practices that will minimize any impacts this project may have.

Compliance with Zoning Code Parking Requirements

Based on the parking requirements for the Downtown (SJMC 20.90.510), no parking is required for the proposed entertainment, drinking and restaurant uses. Even though, the project site does not provide any off-street parking, adequate parking is provided by public parking lots and on street parking.

CONCLUSION

Based on the above analysis, staff concludes that the proposed project is in conformance with both the requirements of the Zoning Ordinance Parking Requirements and City Council 24-hour Use Policy and that the proposed use is compatible with its surroundings.

RECOMMENDATION

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit to allow after-midnight entertainment, entertainment uses and poolroom with live musical entertainment.
2. Hours of operation for the establishment shall be 6:00 PM to 2:00 AM, daily, alcohol service ceasing at 1:30 AM.
3. The project site is located in the Downtown CG Commercial Zoning District.
4. The San Jose 2020 General Plan and the Downtown Strategy Plan provide that restaurant/bars/breweries may be appropriately located in areas designated Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan or the Downtown Strategy Plan Goals and Policies.
5. The City's 24-hour Use Policy and Municipal Code requires that all commercial uses operating between the hours of 12:00 midnight and 6:00 AM be subject to a conditional use permit.
6. The environmental impacts of this project were addressed by Final SEIR entitled, "Downtown Strategy Plan" and adopted by City Council Resolution No. 68839 on April 27, 1999.
7. The surrounding uses consist of commercial uses in all directions.
8. There are no residential uses within 500 feet of the project site.
9. The project is located within the Downtown Parking Management Zone. Based on the parking requirements for the Downtown (SJMC 20.90.510), no parking is required for the proposed bar use.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the proposed use will comply with the Zoning Ordinance in that the operation of an entertainment and drinking establishment after midnight requires the approval of a Conditional Use Permit.
2. The proposed project conforms to the Core Area land use designation in the 2020 General Plan. This project is also consistent with the Downtown Strategy Plan and 24-hour Use Policy for the operation of a bar after midnight.
3. This property is well suited for the subject activities due to its location in the Core Area and its distance from existing or planned residential uses and will not negatively impact the general welfare.

4. The project is in conformance with the California Environmental Quality Act in that it does not include additional impacts to those addressed in the Downtown EIR.
5. The proposed use complies with the parking requirements as stated in the Downtown Off-Street Parking Requirements, Section 20.90.500.
6. The proposed use is consistent with adjacent commercial use and will not impact residential uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed entertainment/drinking facility use is consistent with the commercial uses of the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed entertainment/drinking facility use will contribute to the vitality and desirability of Downtown and will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, *Downtown Strategy Plan EIR* (Resolution No. 68839); and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed entertainment/drinking facility use which is compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
 - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Exterior Improvements. No exterior improvements have been approved with this permit. Any exterior improvements are subject to approval by the Executive Director of the Redevelopment Agency of the City of San Jose and appropriate City permits as required.
4. Hours of Operation. The bar and live musical entertainment shall be limited to 6 PM to 2 AM daily, with alcohol sales terminating at 1:30 AM.
5. Security. A minimum of two security officers shall be on duty for every 100 patrons using the bar facility during its hours of operation.
6. Age Restrictions. Admittance to the establishment will be restricted to patrons 21 years of age and older.
7. Noise and Acoustics.
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.

- b. Noise emission shall comply with the policies identified in the “Noise Element” of the *San Jose 2020 General Plan*.
8. Trash, Refuse, Garbage and Litter.
- a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project’s frontage.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontage.
9. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
10. ABC License. The project operator shall obtain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverages Control (ABC) and shall maintain that license according to the use operated.
11. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
12. Fire Conditions: The applicant shall meet all conditions and regulations required by the Fire Department.

CONDITIONS SUBSEQUENT

- 1. Building Permit. Regarding construction or physical alteration of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
- 2. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.

3. Time Limit. This Conditional Use Permit expires and has no further force or effect five (5) years from the date of its approval. A Compliance Hearing at the discretion of the Planning Commission may be required at any time during the term of this Permit.
4. Renewal. The Permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than 90 days, but less than 180 days, prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
5. Revocation, Suspension, Modification. This Special Use Permit may be revoked, suspended or modified by the Executive Director of the Redevelopment Agency, or the Planning Commission on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350 of the *San Jose Municipal Code* it finds:
 - a. A violation of any condition of the Special Use Permit was not abated, corrected or rectified within the time specified on a notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on a Notice of Noncompliance; or
 - c. A use as presently conducted creates a nuisance.